



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 16, 2022

IN THE MATTER OF:

Appeal Board No. 623516

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 623514, 623515 and 623516, the employer appeals from the decisions of the Administrative Law Judge filed April 28, 2022, which granted the claimant's application to reopen A.L.J. CaseNos. 021-39454, 021-39456, and 021-39458, and overruled the initial determinations disqualifying the claimant from receiving benefits, effective March 24, 2021, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$5,646.50 in benefits recoverable pursuant to Labor Law § 597 (4), \$3,928.00 in Pandemic Emergency Unemployment

Compensation (PEUC) benefits repayable pursuant to § 2107 (e) (2) of the

Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and \$6,000.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and

Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$2,336.17 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for a store for 18 years, through March 23, 2021, ending in the position of manager. On March 23, 2021, the claimant was late for work because she was stuck in a traffic jam caused by a car accident. The claimant sent a text message to one of the owners to say she would be late. The owner did not see the claimant's text because, with the claimant out, the owner was busy attending to customers. When the claimant arrived 20 minutes late, the owner asked the claimant why she was late. After being questioned, the claimant left the store and went outside because she was having anxiety, as she had recently been diagnosed with anxiety and high blood pressure. She called the other owner and told the other owner that she was not feeling well and would have to take the day off. The other owner responded, "if you don't come back, don't bother." After this exchange, the claimant did not return.

The claimant certified for benefits on March 28, 2021. The claimant was asked the reason she was no longer working, and she was offered a list of choices including "School Employee," "Lack of work," "Quit," "Discharged/Let Go," "Fired," and "Strike/Lockout." The claimant certified that she was discharged. The claimant received \$5,646.50 in regular unemployment benefits, \$6,000.00 in FPUC benefits and \$3,928.00 in PEUC benefits.

The claimant did not appear at the hearing held November 8, 2021 because she had just started a new job and was not able to get out of work. Prior to the hearing, the claimant notified the Hearing Section that she would be unable to attend. She was told that she would receive paperwork in the mail to request a new hearing. The claimant did not receive the default decision or any other paperwork. After not receiving any communication for several months, the claimant called the Hearing Section to follow up. The claimant submitted a new hearing request on or about March 25, 2022.

OPINION: The credible evidence establishes that the claimant did not participate in the hearing scheduled for November 8, 2021 because she was working at a new job. The claimant notified the Hearing Section that she would be unable to attend, and she was told that she would receive materials in the mail for requesting a new hearing. After not receiving anything in the mail for several months, the claimant called the Hearing Section to follow up, and she filed her request for a new hearing on or about March 25, 2022. We find that the claimant has shown good cause to excuse the default. Further, the claimant's delay in requesting a new hearing is excusable because the claimant

was told that she would be receiving paperwork in the mail, but she received none. Accordingly, we conclude that the claimant's application to reopen is granted.

The credible evidence further establishes that the claimant separated from employment after she told one of the owners that she was not feeling well and would have to take the day off, and the owner responded, "if you don't come back, don't bother." By choosing not to return to work, the claimant quit. Further, although the claimant characterizes her not feeling well as an episode of anxiety, the claimant has not shown that her anxiety made it medically necessary for her to quit. The claimant arrived at work with the intention of working, and she initially dealt with the anxiety of being questioned by taking a break. She quit only after one of the owners told her not to return if she took the rest of the day off. While the claimant may have found the owners' treatment of her to be objectionable or even stress-inducing, we conclude that these circumstances do not establish good cause to quit for purposes of the Unemployment Insurance Law. Accordingly, the claimant is disqualified from receiving benefits.

The credible evidence further establishes that, on March 28, 2021, the claimant certified that her job ended due to discharge. This certification was factually false, as the claimant quit. Subsequently, the claimant received \$5,646.50 in regular unemployment benefits, \$6,000.00 in FPUC benefits and \$3,928.00 in PEUC benefits. Because the claimant was disqualified, these benefits were overpaid. The regular benefits are recoverable because the claimant's certification was factually false, and the FPUC and PEUC benefits are recoverable pursuant to federal law. Accordingly, we further conclude that all of these benefits are recoverable. However, the credible evidence fails to establish that the claimant's certification constitutes a willful misrepresentation. As a lay person, the claimant could not be expected to draw the legal conclusion that, after

being told to return to work or "don't bother," her separation from employment was the result of a quit and not a discharge. Under these circumstances, the claimant should not be penalized for failing to draw a correct legal conclusion. Accordingly, the claimant is not subject to a forfeiture penalty or civil monetary penalty.

DECISION: The decisions of the Administrative Law Judge are modified as follows and, as so modified, are affirmed.

In Appeal Board Nos. 623514, 623515 and 623516, the claimant's application to reopen A.L.J. Case Nos. 021-39454, 021-39456, and 021-39458 is granted.

In Appeal Board Nos. 623514 and 623515, the initial determinations, disqualifying the claimant from receiving benefits, effective March 24, 2021, on the basis that the claimant voluntarily separated from employment without good cause; and charging the claimant with an overpayment of \$5,646.50 in benefits recoverable pursuant to Labor Law § 597 (4), \$3,928.00 in Pandemic

Emergency Unemployment Compensation (PEUC) benefits repayable pursuant to §

2107 (e) (2) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and \$6,000.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief,

and Economic Security (CARES) Act of 2020, are sustained.

In Appeal Board No. 623516, the initial determination, reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$2,336.17 on the basis that the claimant made a willful misrepresentation to obtain benefits, is overruled.

RANDALL T. DOUGLAS, MEMBER

Federal law provides that New York State can waive repayment of Pandemic Emergency Unemployment Compensation (PEUC), Federal Pandemic Unemployment Compensation (FPUC), Lost Wages Assistance (LWA), Mixed Earners Unemployment Compensation (MEUC) or Pandemic Unemployment Assistance (PUA) benefits overpaid to the claimant if the overpayment was not the claimant's fault and repayment would be contrary to equity and good conscience. For more information on the overpayment waiver process and instructions to request a waiver, please visit the New York State Department of Labor's website, <https://dol.ny.gov/overpayment-waiver-and-appeal-process>.